

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

RICHARD KUBERSKI, Derivatively and on)	
Behalf of Nominal Defendant LIME ENERGY)	
CO.,)	
Plaintiff,)	
)	
v.)	Case No. 1:12-cv-7993
)	
LIME ENERGY CO., JOHN O'ROURKE,)	Honorable Suzanne B. Conlon
JEFFREY MISTARZ, DAVID ASPLUND,)	
GREGORY BARNUM, CHRISTOPHER)	
CAPPS, WILLIAM CAREY, JR., JOSEPH)	
DESMOND, STEPHEN GLICK, PRADEEP)	
KAPADIA, RICHARD KIPHART, DANIEL)	
PARKE, AND DAVID VALENTINE,)	
Defendants,)	
)	
LIME ENERGY CO., a Delaware Corporation,)	
Nominal Defendant)	
_____)	

DEFENDANTS' AGREED MOTION FOR ENTRY OF SCHEDULING ORDER

Nominal Defendant Lime Energy Co. ("Lime Energy" or the "Company") and Defendants John O'Rourke, Jeffrey Mistarz, David Asplund, Gregory Barnum, Christopher Capps, William Carey, Jr., Joseph Desmond, Stephen Glick, Pradeep Kapadia, Richard Kiphart, Daniel Parke, and David Valentine (the "Individual Defendants," and together with Lime Energy, the "Defendants") hereby move for entry of a scheduling order. Plaintiff agrees to the relief sought in this motion. In support of this Agreed Motion, Defendants state as follows:

1. On October 5, 2012, Plaintiff Richard Kuberski, a stockholder of Lime Energy, filed a putative derivative action (the "Derivative Complaint") against the Individual Defendants alleging, *inter alia*, breach of the fiduciary duty, abuse of control, waste, and unjust enrichment.

The suit followed an announcement issued by Lime Energy on July 17, 2012 that the Company had misstated revenue dating back to 2010.

2. On October 23, 2012, Plaintiff served a copy of the Derivative Complaint on each of the Defendants. Pursuant to Federal Rule of Civil Procedure 12, Defendants have until November 13, 2012 to answer or otherwise respond to the Derivative Complaint.

3. As the Company disclosed in its July 17, 2012 press release, the Company, under the supervision of the Audit Committee and with the assistance of outside counsel, is conducting an investigation of the misstatement of revenue. As the Company further disclosed on July 17, 2012, the misstatement may potentially require restatement of certain financial statements.

4. Prior to the filing of the Derivative Complaint, four separate putative class action lawsuits were filed in this Court against Lime Energy and Defendants O'Rourke, Mistarz, and Asplund for alleged violations of federal securities laws relating to the Company's July 17, 2012 announcement. On October 26, 2012, these four putative securities class actions were consolidated under the lead case, *Satterfield v. Lime Energy Co. et al*, Case No. 1:12-cv-5704, and are pending before Judge Gettleman.

5. Pursuant to the scheduling order entered in *Satterfield*, the plaintiffs in *Satterfield* have until January 18, 2013 to file a consolidated amended complaint in that action.

6. Defendants believe that the Derivative Complaint in this action is subject to dismissal pursuant to Rule 23.1 for failure to make a demand on the Company's board of directors. However, Defendants recognize that plaintiff may well seek to amend the current Derivative Complaint following the filing of the amended complaint in *Satterfield*. The Parties agree that it would maximize efficiency and reduce costs for the Parties to harmonize the schedule in this case with the schedule in *Satterfield*.

7. Accordingly, the Parties agree, subject to this Court's approval, that Defendants need not answer or otherwise respond to the Derivative Complaint, and further agree that:
- a. Plaintiff shall either file an Amended Complaint or notify Defendants that the Derivative Complaint shall be the operative complaint by February 1, 2013 (two weeks after the consolidated amended complaint is scheduled to be filed in *Satterfield*).
 - b. Defendants' Motion(s) to Dismiss the Amended Complaint (or the Derivative Complaint, if operative) and accompanying memorandum of law shall be filed by March 19, 2013.

WHEREFORE, Defendants respectfully request that this Court enter the agreed upon schedule.

Pursuant to this Court's Case Management Procedures, an Agreed Proposed Order is being submitted to the Court via email.

Respectfully submitted,

/s/ Patrick J. Wackerly

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